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July 21, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission*
Washington, D.C. 20554

Re: **1998 Biennial Regulatory Review**
Notice of Inquiry
MM Docket No. 98-35

Dear Ms. Salas:

On behalf of our client, Contemporary Broadcasting, Inc., licensee of Station KFMZ(FM), Columbia, Missouri, enclosed herewith for filing are an original and eleven (11) copies of its COMMENTS OF CONTEMPORARY BROADCASTING, INC. in the above-referenced matter.

Please direct any inquiries or communications concerning this matter to the undersigned.

Very truly yours,

Jerold L. Jacobs

Jerold L. Jacobs

Enc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))	MM Docket No. 98-35

TO: The Commission

COMMENTS OF CONTEMPORARY BROADCASTING, INC.

CONTEMPORARY BROADCASTING, INC. ("CBI"), licensee of Station KFMZ(FM), Columbia, Missouri, by its attorneys, hereby comments on the *Local Radio Ownership Rules* section (¶¶'s 17-23) of the Commission's Notice of Inquiry in MM Docket No. 98-35 ("Notice"), FCC 98-37, released March 13, 1998. In support whereof, the following is shown:

I. The Commission's Present Radio Duopoly Rule Has a Negative Effect on Radio Competition in Small Markets and Should be Repealed

A. Background and Statement of Problem

1. Station KFMZ(FM), Columbia, Missouri, began operations in October 1971. It is one of the oldest outlets in the 19-commercial station[1] Columbia/Jefferson City, Missouri small radio

[1] The other Missouri stations are: KBXR(FM), KCMQ(FM), KTGR(AM), KFRU(AM), and KPLA(FM), all Columbia; KJMO(FM), KLIK(AM), KTXY(FM), and KWOS(AM), all Jefferson City; KATI(FM) and KREL(AM), California; KLSC(FM), Fayette; KWWR(FM) and KXEO(AM), Mexico; KMFC(FM), Centralia; KCLR-FM and KWRT(AM), Boonville; and KOQL(FM), Ashland.

market,[2] and it places a 70 dBu city-grade signal over both Jefferson City and Columbia. Moreover, Station KFMZ has had the same owner (CBI) since its inception and for a longer time (27 years) than any other market station. During the last five years, there has been a substantial amount of station consolidation in the market, so that the previous 11 or more separate radio "voices" have now been reduced to a mere seven: Zimmer Radio Group (9 stations);[3] Columbia FM, Inc. (4 stations); Moniteau Communications, Inc. (1 station); KXEO Radio, Inc. (2 stations); Clair Broadcasting Company (1 station); Big Country of Missouri, Inc. (1 station); and CBI (1 station).

2. At the outset of the Notice (¶4), the Commission states that "[f]ederal policy has long favored preserving a multiplicity of broadcast outlets". Yet, as CBI will now demonstrate, using the Columbia/Jefferson City radio market as an example, the Commission's present overly-permissive radio duopoly rule has had very negative effects upon competition in radio advertising, program production, and source diversity in Columbia/Jefferson City, a typical small radio market. These negative effects endanger the vitality and even the viability of licensees, such as CBI, which do not own several outlets in the market. In short, the excessive amount of

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[2] To help gauge the size of this radio market, note that Columbia-Jefferson City, Missouri is the 145th TV DMA market.

[3] As detailed in the December 12, 1987 Petition to Deny filed by Columbia FM, Inc. against the still-pending proposed assignment of the licenses of Stations KLIK(AM), KTXY(FM), and KATI(FM) (File Nos. BAL-971027ES, ET, and ER), six Zimmer brothers have overlapping ownership interests in Zimmer Radio of Mid-Missouri, Inc., Zimco, Inc., and MVP Radio, Inc. Columbia FM, Inc. correctly concludes that the nine stations owned or proposed to be owned by these three corporations (together, the "Zimmer Radio Group") should be treated as commonly owned. Hence, the Zimmer assignment proposal violates the 6-station common ownership limit in §73.3555(a)(iii) of the Commission's Rules that applies where, as here, there are 15-29 commercial radio stations in the market.

radio consolidation that has occurred in small markets under the present radio duopoly rule undermines the declared federal policy in favor of a multiplicity of separate radio voices in all markets. Thus, rather than demonstrating that present levels of radio competition may justify broadening or even eliminating the radio duopoly rule (a suggestion made in ¶5 of the Notice), the current situation shows that the rule should be narrowed in order to stem the current consolidation tide.

B. CBI's Proposed Solution

3. In that light, CBI proposes that, with Congressional consent and following issuance of an appropriate Notice of Proposed Rule Making in this Docket, the Commission should repeal the increased permissible size of radio duopolies, which was established by the 1996 changes in §73.3555(a) of the Rules pursuant to Congressional mandate under Section 202 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). Returning to the status quo ante, the Commission should reinstate the previous 2 AM/2 FM station duopoly limitations for markets with 15 or more commercial stations, which preceded the 1996 changes in §73.3555(a). See also Paragraphs 13-14 below for further suggested rule changes.

C. Amplification of Columbia/Jefferson City Example

4. During the last five years, Station KFMZ has suffered a tremendous loss of revenue,[4] mainly due to the fact that the rest of the viable commercial stations in the Columbia/Jefferson City market are owned or controlled by two monopolies: Zimmer Radio Group (9 stations) and Columbia FM, Inc. (4 stations). See Paragraph 1 above. Simply stated, the Zimmer Radio

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[4] For instance, KFMZ used to bill $80,000-$100,000 a month in April, but in April 1998, the revenue was only $34,000.

Group and Columbia FM have established a stranglehold on the radio advertising and program production markets in Columbia/Jefferson City, which is slowly squeezing single stations like KFMZ to death.

5. Interestingly, Columbia FM has recently provided the Commission with large quantities of data on this issue in its still-pending effort (see footnote 3 below) to keep the Zimmer Radio Group from officially increasing its radio ownership in the market from six stations to nine. See footnote 3 above. (The Zimmer Radio Group currently operates the three additional stations through time brokerage and joint sales agreements.) Since the proposed transaction has been pending before the Commission for some nine months, it is clear that Columbia FM has raised troubling media concentration and anticompetitive issues. However, despite Columbia FM's powerful economic arguments, the Zimmer Radio Group brazenly retorts: "The Commission has never denied a proposed assignment that complies with its local radio ownership rules, and it should not do so in this proceeding".[5] This is a very telling point, because when the Commission first liberalized its radio duopoly rules in 1992 and adopted numerical caps for radio markets of different sizes, it emphasized that the 2 AM/2 FM station cap in markets with 15 or more stations applied "provided that the proposed combination does not lead to excessive concentration in the market".[6] The fact that the Commission routinely approves increased concentration, despite all objections, suggests that the numerical caps have

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[5] January 8, 1998 Joint Opposition to Petition to Deny, p. 13.

[6] Memorandum Opinion and Order and Further Notice of Proposed Rule Making in MM Docket No. 91-140, 7 FCC Rcd 6387, 6388 ¶7 (1992).

become irrebutable presumptions, which is neither what the Commission originally intended nor what the public interest requires.

(1) Destructive Advertising Rates and Practices

6. How are the Zimmer Radio Group and Columbia FM destroying the revenue base of KFMZ? In general terms, the marketplace is competitive only between the two superduopolies, as they fight each other to get business at one rate or another and by offering bonus spots on bonus stations. (See Paragraphs 10-11 below for a discussion of the superduopolies' audience shares.) The sales pitch is that an advertiser can do "one-stop" shopping, pay one rate, and get four different formats, instead of dealing with four or more different stations (including KFMZ). Plainly, this is not a case of duopoly, but rather of <u>monopoly</u>, which is seriously undermining the viability of a solo FM station (KFMZ) that has been established in the Columbia/Jefferson City market for 27 years.

7. More specifically, by way of illustration, the Zimmer Radio Group offers Stations KCMQ, KLSC, and KLCR-FM to advertisers for a package price. This allows advertisers to spend $30 per commercial and air on three stations. To meet this price, KFMZ is forced to offer $10 commercials to even be considered. The Zimmer Radio Group sells this approach as "getting your money's worth," without regard to what this does to rate integrity. And Columbia FM does exactly the same thing with the same thoughts. Both groups talk "more is better," while they try to undercut each other, and KFMZ has suffered because of this price tactic.

8. Client service has also suffered because of the monopolistic conduct of the two superduopolies in the Columbia/Jefferson City market. Good business practices take a back seat in the thinking of the Zimmer Radio Group and Columbia FM. They sell strictly on price and number of stations without regard to what the advertisers' needs are. This has led to some

businesses turning against radio advertising in general. Unlike KFMZ, the Zimmer Radio Group frowns on promotional opportunities for clients, which is a big part of radio. The result is that would-be radio advertisers are lost. Columbia FM does promotions, but their focus is on remote broadcasts. Thus, while Columbia FM provides something for the client, it does not go all out to insure that the client gets its money's worth. Both companies do not get upset at client dissatisfaction, because they feel that since they control such a large share of the market, people will have to advertise with them. These attitudes have caused radio to lose ground as an advertising medium in the Columbia/Jefferson City market, with KFMZ becoming an unwilling casualty.

9. Finally, advertising agencies' buying practices in the Columbia/Jefferson City market have been skewed to KFMZ's detriment by the two superduopolies' tactics. In such a small market, agencies want to get their "buys" done as simply and quickly as possible. With the "one-stop shopping" promoted by the Zimmer Radio Group and Columbia FM, they are both able to meet the gross rating points and costs per point of the agencies. The agencies see that they can meet their goals with either group, so they choose one of them and move on to the next market. (In its January 8, 1998 Joint Opposition to Petition to Deny (at p. 34), the Zimmer Radio Group actually lauds "one-stop buying" because it "promote[s] efficiencies in the Columbia-Jefferson City advertising market by reducing the transactional costs of advertisers...[who] would prefer to negotiate with an entity selling advertising time on six stations, rather than bargain with two or more entities selling time individually.") This situation effectively eliminates KFMZ from any chance of getting the buy, and, as a result, in recent months, KFMZ has lost buys from Ameritech Cellular and Amtrak at the national level and from Unlimited Opportunities, Lakota Coffee, Cyclextreme, and D & H Drugs on the local level.

(2) Effects on Audience Share and Source Diversity

10. Prior to the 1996 changes in §73.3555(a), former §73.3555(a)(1)(ii) stated that in radio markets with 15 or more commercial stations, a party could own up to 2 AM and 2 FM commercial stations "provided, however, that evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered prima facie inconsistent with the public interest". Unfortunately, that audience share proviso was not included in the 1996 liberalization of the Rule.

11. The Antitrust Division of the U. S. Department of Justice routinely reviews radio acquisitions where one owner has a 20% to 48% market share.[7] However, in the Columbia/ Jefferson City market, the Zimmer Radio Group and Columbia FM each have in excess of a 25% share of the market, even without the Zimmer Radio Group's pending acquisition of three more stations. Moreover, the Attorney General of Missouri filed "Comments" on the proposed Zimmer Radio Group acquisition on December 12, 1997, and requested (at p. 2) that the Commission should suspend action on the acquisition until the State has completed its own investigation into the "competitive effect and effect on the public interest of the proposed acquisition". Importantly, the Attorney General noted (at p. 3) that the "data currently available to the Attorney General shows that the overall market share of the three Zimmer entities, based on advertising revenue, will increase from 44% to 85%" and that "these figures raise significant

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[7] For instance, in the Cedar Rapid, Iowa market (87th TV DMA), the Department of Justice recently objected to Capstar's proposal to purchase two more FM stations, saying that the acquisitions would give Capstar five of the market's 12 stations, allowing it to control 49% of Cedar Rapids' radio advertising revenues. However, Capstar will be allowed to buy one additional FM station in the market.

concerns regarding the effect of the acquisitions upon the public interest and the market for radio advertising".

12. To this adverse market share data must be added the brute facts concerning the destruction of source diversity and the program production market in Columbia/Jefferson City. As CBI already noted in Paragraph 1 above, together the Zimmer Radio Group and Columbia FM own or control 13 of the 19 commercial stations in the market, and the Zimmer Radio Group alone owns or controls almost 50% of the stations (9 out of 19). Surely neither Congress nor the Commission intended relaxation of the radio duopoly rules to lead to such a diminution of separate radio "voices" in small radio markets in general and Columbia/Jefferson City in particular.[8]

13. While there are nominally seven "voices" remaining in the Columbia/Jefferson City market (out of the original 11 or more), the four single stations (including KFMZ) and the AM/FM combo in Mexico, Missouri are completely overwhelmed in terms of program purchasing power and audience share by the Zimmer Radio Group's nine stations and Columbia FM's four stations. CBI notes that §73.3555(a)(1)(iv) of the present radio duopoly rule prohibits an entity from owning, operating, or controlling more than 50% of the radio stations in a market that has 14 or fewer commercial radio stations. However, CBI submits that the Columbia/ Jefferson City market abundantly demonstrates why, practically speaking, even a lower

[8] Importantly, the overall Cedar Rapids/Iowa City radio market discussed in Footnote 7 above has 17 commercial stations but only four separate radio "voices," which makes it very much like the Columbia/Jefferson City market. If Capstar cannot control 49% of the radio advertising revenue in its market, or five out of twelve stations in Cedar Rapids, the Zimmer Radio Group should not be allowed to monopolize the Columbia/Jefferson City market.

percentage wreaks havoc in a small radio market today, even where there are more than 14 commercial stations.

II. Conclusion

14. The Commission's review of its local radio ownership rules in the Notice is very timely. CBI strongly believes that the radio duopoly rule is too liberal in small radio markets, such as Columbia/Jefferson City, Missouri, and that further multiple ownership limitations are necessary and appropriate. CBI urges that the Commission should return to the 2 AM/2 FM radio duopoly limit of former §73.3555(a)(1)(ii) of the Rules in below the Top-100 radio markets and that existing superduopolies should be required to divest any FM stations in excess of three in a given market. Moreover, the ownership attribution rules should be clarified and strengthened to prevent future marketplace abuses, such as what the Zimmer brothers have already created in the Columbia/Jefferson City market.

15. WHEREFORE, in light of the foregoing, CBI respectfully requests that the Commission should amend its local radio ownership rules in accordance with the above Comments.

Respectfully submitted,

CONTEMPORY BROADCASTING, INC.

By [signature]
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Dated: July 21, 1998